

South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201


MARK SANFORD
Governor

SCOTT H. RICHARDSON
Director of Insurance

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

BULLETIN NUMBER 2008-02

TO: Small Employers, Accident and Health Insurers and Other Persons
Interested in Forming Health Group Cooperatives

FROM: Scott H. Richardson, CPCU 
Director

RE: Procedures for Forming Health Group Cooperatives in South Carolina

DATE: March 14, 2008

I. PURPOSE OF THIS BULLETIN

Effective February 19, 2008, the Governor signed into law legislation that authorizes the establishment of Health Group Cooperatives (hereinafter referred to as "cooperatives"). Cooperatives are nonprofit organizations organized to provide insurance related services to members located within particular geographic areas of the state. The purpose of this bulletin is to outline the procedures for establishing a health group cooperative in South Carolina.

II. REGISTRATION PROCEDURES

A. OVERVIEW

A cooperative must be registered and approved by the South Carolina Department of Insurance prior to offering any insurance related services in this state. After the cooperative has been registered and approved by the Department, it may offer the following coverages or services to its members, including, without limitation, continuation of coverage administration; purchasing services for health insurance and other supplemental health coverages such as dental, vision, and long-term care; provided, however, that a cooperative offering such related coverages or services must provide separate and explicitly identified rate or fee schedules for such coverages and services to distinguish them from health insurance premiums and membership fees.

Any accident and health insurance policy, or other supplemental insurance coverage offered through a cooperative must be provided by an insurer authorized by the South Carolina Department of Insurance to conduct accident and health insurance business in this state. A cooperative may not directly provide insurance or bear any risk associated with any health insurance coverage or other insurance offered through the cooperative.

No entity shall hold itself out as a cooperative without registering with the Department and having a registration issued by the director or his designee. The registration will constitute authorization to function as a cooperative in South Carolina. Any entity not approved as a cooperative by the director or his designee shall not use as part of its advertising or marketing any self-descriptive term that is confusingly similar to a cooperative. Any entity not approved as a cooperative by the director or his designee and providing services substantially similar to those of a cooperative shall clearly indicate in its advertising and marketing materials that such entity is not a cooperative established in accordance with S.C. Code Ann. §38-71-1345. Failure to comply with this section shall constitute an unfair and deceptive act or practice in the business of insurance within the meaning of Chapters 55 and 57 of Title 38.

B. APPLICATION PROCESS

An entity interested in serving as a cooperative shall submit an application to the South Carolina Department of Insurance for approval. *See Exhibit A.* The following information must be attached to the application for review: 1) a business plan; 2) biographical affidavits of the board of directors; 3) operating bylaws; 4) evidence of financial security; 5) membership criteria; 6) management agreements; 7) evidence of approval by the Secretary of State's Office; and 8) any other information deemed necessary for the Department to appropriately evaluate the application. In considering the application, the Department will evaluate whether the business plan and other application and organizational documents comply with applicable state and federal law.

III. AREAS THAT MAY BE SERVED BY COOPERATIVES

Each cooperative shall serve a particular geographic area of the state that consists of either one entire county or more than one contiguous entire county. The director or his designee shall not approve any cooperative to serve a geographic area that divides any county or contains noncontiguous counties.

The authority granted by the director or his designee to a cooperative to serve a particular geographic area shall be nonexclusive, and there shall be no limit upon the number of cooperatives that may be approved to serve any particular geographic area. The director or his designee shall approve service for any geographic service area as proposed by the applicant nonprofit corporation if such proposed service area meets the requirements of this bulletin.

IV. MEMBERSHIP

Membership in a cooperative shall be voluntary. A cooperative shall accept for membership in the cooperative any eligible small employer which agrees to pay the membership fee and a premium for coverage through the cooperative and which abides by the bylaws and rules of the cooperative. Membership cannot be denied based on the claims experience of the employer or a health status-related factor in relation to the employee or a dependent of the employee. The membership materials must clearly disclose that an employer electing to participate in a cooperative shall commit to be a member of the purchasing cooperative for a period of five years except as set forth in §38-71-1345(A)(2).

‘Small employer’ means, in connection with a health insurance plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, association, or employer, as defined in Section 3(5) of the Employee Retirement Income Security Act of 1974, that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar year, employed no more than fifty eligible employees or employed an average of not more than fifty employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

(a) In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, or that are treated as a single employer under subsections (b), (c), (m), or (o) of Section 414 of the Internal Revenue Code of 1986 are considered one employer; and

(b) In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether that employer is a small or large employer must be based on the average number of employees that it reasonably is expected to employ on business days in the current calendar year; and

(c) Any reference in this article to an employer includes a reference to any predecessor of the employer.

A cooperative may, at its option, accept for membership in the cooperative any otherwise eligible employer which does not qualify as a small employer because it is a sole proprietor. If a cooperative chooses to accept sole proprietors, the cooperative may not discriminate in the acceptance process based upon health status or claims experience of the sole proprietorship. The cooperative is required to attempt to obtain coverage for these sole proprietors. However, such attempt is subject to the medical underwriting requirements and policies of the small employer insurer.

V. GENERAL POWERS OF THE COOPERATIVE

Each cooperative shall have the powers, duties, and responsibilities to:

- (1) Establish and clearly define the conditions of membership and participation in the cooperative. Each cooperative shall establish conditions for small employers that must include, but need not be limited to, assurance that the group is a valid small employer and is not formed for the purpose of securing health coverage and assurance that the individuals in the small employer group are employees and have not been added for the purpose of securing health coverage. A cooperative shall not establish or enforce membership conditions or participation requirements, bylaws, rules, policies, financial or otherwise, that have the effect of excluding or including membership on the basis of health status of otherwise eligible individuals or other risk characteristics, including, but not limited to, industry type, occupation, experience, age, gender, family composition, education, avocation, or income; nor shall a cooperative require any small employer, employee, sole proprietor, or dependent to subscribe to health coverage and other supplemental insurance coverage or products or services not related to health care;
- (2) Provide to cooperative members clear, standardized information on each health plan or other coverage offered by insurers through the cooperative, including information on premiums, enrollee costs, quality, patient satisfaction, enrollment, and enrollee responsibilities and obligations and provide health plan and other insurance comparison sheets in accordance with South Carolina laws or regulations;
- (3) Annually offer to all cooperative members all health plans and other insurance offered by insurers that meet the requirements of Chapter 71 of Title 38. A cooperative shall, whenever feasible, contract with multiple, unaffiliated insurers to offer health plans and other insurance to its members;
- (4) Selectively contract with insurers based on the quality and cost effectiveness of services and other factors deemed to be relevant by the cooperative;
- (5) Request proposals for health plans and other insurance from accident and health insurers;
- (6) Establish administrative procedures and accounting procedures consistent with generally accepted accounting principles for the operation of the cooperative and members' services, prepare an annual cooperative budget, and prepare annual program and fiscal reports on cooperative operations as required by applicable South Carolina law;
- (7) Develop and implement a marketing plan to publicize the cooperative to potential members;
- (8) Develop grievance procedures to be used in resolving disputes between the cooperative and the insurers. Any insurer that serves a cooperative may appeal to the department any grievance that is not resolved by the cooperative;

- (9) Develop grievance procedures to be used in resolving disputes between members of the cooperative and the insurers. A member may appeal to the department any grievance that is not resolved by the insurer;
- (10) Maintain all records, reports, and other information required by Title 38 or by department regulation or other applicable laws;
- (11) Contract with qualified parties for any services necessary to carry out the powers and duties outlined in §38-71-1355;
- (12) Enroll eligible members, employees, and dependents in selected health plans and other insurance and services, establish procedures for collecting premiums, collect premiums, appropriately distribute collected premiums to participating insurers, and pay third-party contractors. This may include the remittance of the share of the group premium paid by both an employer and an employee. The cooperative shall pay participating insurers their contracting premium amounts on a prepaid monthly basis or as otherwise mutually agreed upon;
- (13) Select and contract with participating licensed producers for representation of all insurers offering health plans or other insurance through the cooperative;
- (14) Set and collect reasonable fees for membership in the cooperative which may include reasonable and necessary costs incurred in administering the cooperative. Any such fee must be clearly identified and not inconsistent with the provisions of the bylaws;
- (15) Provide semiannual financial statements and annual reports regarding cooperative programs and operations to the director or his designee; and
- (16) Provide for annual independent audits by a certified public accountant and make reports of such audits available to the director or his designee and the public.

VI. EVIDENCE OF FINANCIAL RESPONSIBILITY

Each cooperative shall file annually with the director or his designee, at such time and in such form and manner as specified by the director or his designee, evidence of adequate security and prudence in account, premium collection, and the handling and transfer of monies and evidence of compliance with the provisions of the law, including a description of the specific services provided by the cooperative. Each cooperative shall file a bond or letter of credit with the Department sufficient to secure the premiums and/or other monies collected. The bond must be issued by an A rated insurer authorized to transact the business of insurance in South Carolina. Additionally:

- (1) Each cooperative shall maintain an independent trust account or accounts for the deposit of any premium monies collected. Other funds must not be commingled with the premium dollars collected.

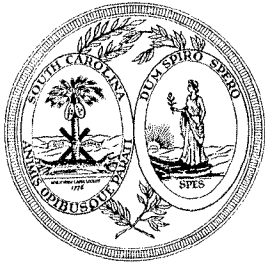
(2) Each cooperative shall disclose to the director or his designee any agreements made prior to its authorization as a cooperative.

VII. SELLERS AND MARKETERS OF INSURANCE PRODUCTS MUST BE LICENSED IN ACCORDANCE WITH SOUTH CAROLINA LAW

Sellers and marketers of health insurance products must be licensed. If a seller is marketing health plans or any other supplemental insurance coverages through a cooperative which would otherwise require an insurance producer's license pursuant to §38-43-10 *et seq.*, then that seller or marketer must be licensed as an insurance producer.

VIII. QUESTIONS

Any questions regarding the implementation of this legislation should be submitted in writing directed to the attention of Carla Griffin at the LAH mailbox at lahmail@doi.sc.gov. Questions will be answered and posted on the Department's website as soon as possible.



South Carolina
Department of Insurance
Division of Financial Services
1201 Main Street, Suite 1000
Columbia, S.C. 29201

EXHIBIT A

MARK SANFORD
Governor

SCOTT H. RICHARDSON CPCU
Director of Insurance

Mailing Address:
P.O. Box 100105
Columbia, S.C. 29202-3105
Telephone: (803) 737-6230 Fax: (803) 737-6233
E-mail: lahmail@doi.sc.gov

STATE OF SOUTH CAROLINA
APPLICATION FOR REGISTRATION AS A HEALTH GROUP COOPERATIVE
(All information should be typed)

1. List the exact name of the Health Group Cooperative (Cooperative).

2. List the complete physical address of the Cooperative.

3. List the name, address and telephone number of the contact person or officer of the Cooperative who has knowledge of its insurance program, including membership criteria, coverage.

Name: _____
Title: _____
Telephone: _____ Fax: _____
E-mail: _____
Address: _____

4. List the name, address, and telephone number of the firm that acts as the administrator of the Cooperative and the name of the principal account executive responsible for the Cooperative's insurance program. (If none, answer none. If an agency is listed here, the agency must be licensed with this Department.)

Firm Name: _____
Account Executive: _____
Title: _____
Telephone: _____ Fax: _____
E-mail: _____
Address: _____

5. Attach a list of the names, addresses, and occupations of the principal officers and directors of the Cooperative.
6. The Cooperative offers health insurance only to its members to cover their employees and their dependents.
7. The Cooperative contracts with participating licensed producers to market coverage of small employer insurers offering health coverage through the Cooperative.
8. List the county or counties of the geographic area of the state that the Cooperative serves.

9. Has any person transacting business on behalf of this Cooperative ever:
 - (A) been arrested, indicted and convicted of a felony or is a felony charge currently pending against any such person? _____
 - (B) had denied any application for a professional, vocational or business license? _____
 - (C) had suspended or revoked any such license? _____
 - (D) had withdrawn or surrendered any such application or license to avoid potential disciplinary action against licensee? _____

If the answer to any part of this question is yes, attach a supplementary statement explaining in full each such occurrence.

10. The following information must be attached to the application for review: 1) a business plan; 2) biographical affidavits of the board of directors (Attachment A); 3) operating bylaws; 4) evidence of financial security; 5) membership criteria; 6) management agreements; 7) evidence of approval by the Secretary of State's Office; and 8) any other information deemed necessary for the department to appropriately evaluate the application.

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

Sworn before me this _____ day of _____, 20____.

Notary Public, State of _____
My Commission Expires _____

Attachment A
Biographical Affidavit
Page 1 of 2

A. Personal Identifying Information:

Name: _____
 (Last) (First) (Middle Initial)

Title: _____

Business Address: _____

Telephone: _____ Fax: _____ E-mail: _____

Date of Birth: _____

Place of Birth (County/State): _____

Social Security Number: _____

B. Individual Employment History, Licenses and Education

Attach a resume reflecting relevant experience, licenses and education. Include the names and contact information of at least three professional references.

C. History of Legal or Disciplinary Actions or Sanctions

1. Except for minor traffic violations, have you ever been indicted, been convicted, pled no contest, had a sentence imposed, suspended, or been pardoned of a conviction for any crime?

YES ☐ NO ☐

2. Are there any criminal actions pending against you?

YES ☐ NO ☐

3. Have you ever been named as a defendant in any civil action or proceeding in which allegations were made against you involving moral turpitude, including but not limited to fraud or breach of fiduciary responsibility?

YES ☐ NO ☐

NOTE: If "YES" to 1, 2, or 3, attach explanation(s) including the date of the action or proceeding, place (county of the filing), the civil docket number and the disposition of the case.

**Attachment A
Biographical Affidavit
Page 2 of 2**

4. Have you ever been an owner, officer, trustee, management employee or controlling stockholder of an entity which, while you occupied any such position or served in any such capacity with respect to it:

a. suffered the suspension or revocation of its certificate of authority or license to do business in any state?

YES ☐ NO ☐

b. was denied a certificate of authority, license or contract to do business in any state?

YES ☐ NO ☐

NOTE: If "YES" to 4 attach an explanation.

I hereby attest to the accuracy and completeness of this biographical information and consent to any investigation by the SCDOI to verify the information, including a criminal background check.

Signature

Date

Sworn to or affirmed and subscribed before me
this ____ day of _____, 20____

Signature of Notary

Name of Notary

Notary Public for the State of _____

My Commission Expires: _____